General Electric Company *and* International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC. Cases 5-CA-11472, 5-CA-11731, and 5-RC-10982

April 7, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On October 21, 1980, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a cross-exception and a brief in support thereof and in answer to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

Both Respondent and the Charging Party except, *inter alia*, to that portion of the Administrative Law Judge's recommended remedy which requires Respondent to resume implementation of its Sounding Board progam.[4] Although we adopt the Administrative Law Judge's finding that the implementation and subsequent discontinuance of Respondent's Sounding Board program violated Section 8(a)(1) and (3) of the Act, respectively, we find merit in the Charging Party's exception.

As alluded to in footnote 2, *supra*, Respondent's Sounding Board program provided a formal mechanism for including employees in the identification and resolution of employment-related issues of common concern. The Administrative Law Judge therefore reasoned that, because Sounding Board possessed at least the potential of leading to improvements in wages, hours, and working conditions, Sounding Board was itself a proposed condition and benefit of employment.[5] Based upon this analysis, the Administrative Law Judge found, and we agree, that the implementation of Sounding Board constituted a violation of Section 8(a)(1) of the Act as granting a benefit in order to discourage support for the Union; and also found the discontinuance of Sounding Board violative of Section 8(a)(1) and (3) of the Act as a reprisal for employee support for the Union. Analogizing the instant case to a situation wherein an employer unlawfully grants a wage increase to its employees, but which the Board does not order the employer to rescind, the Administrative Law Judge recommended that

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Respondent excepts, *inter alia*, to the Administrative Law Judge's finding of a violation of Sec. 8(a)(1) of the Act, not alleged in the complaint, with respect to the employee attitude survey of July 17-18, 1979. The Administrative Law Judge concluded that the survey constituted an unlawful solicitation of employee grievances. Respondent contends that the matter was not litigated at the hearing and also requests that if "the issue of the July, 1979 attitude survey is determined to be a subject of the instant cases" that the record be reopened to provide Respondent the opportunity to "present detailed evidence as to the nature of the attitude survey, its history at Winchester, and the timing of the 1979 survey."

The General Counsel alleges in the complaint, and the Administrative Law Judge found, that, by announcing and subsequently implementing the "Sounding Board" program, Respondent promised and granted a benefit to its employees in order to discourage support for the Union. A review of the record herein reveals that the attitude survey was an essential component of the Sounding Board concept, which was itself a program to invite employee participation not only with respect to the identification of problems, but also with respect to their solution. Thus, the survey became the vehicle for determining which employment-related issues were of concern to Respondent's employees; and it was these issues—although perhaps not exclusively these—which would be considered and acted upon by Respondent's management within the context of the sounding board apparatus. Contrary to Respondent, the record evidence plainly reflects that this connection between the survey and sounding board was fully litigated. Indeed, as is apparent from the record, apart from the July survey no other organized method for determining issues of concern to employees was contemplated by Respondent. Kenneth Furchak, Respondent's manager of employee Relations and training, testified that at or about the same time that he attended a seminar concerning Sounding Board, on May 31 and June 1, 1979, he was advised that a survey would be taken and "perhaps some of the concerns that were raised there, we could come up with an identifiable subject [for Sounding Board]." Thus by Respondent's own admission, the survey was earmarked, from its inception, for Sounding Board use. We therefore find the issue of the attitude survey to be closely related to allegations in the complaint and to have been fully litigated. Accordingly, Respondent's motion to reopen the record is hereby denied.

[3] Although the Administrative Law Judge properly found that Respondent's attitude survey constituted an unlawful solicitation of employee grievances, he inadvertently failed to provide in his recommended Order that Respondent shall cease and desist from engaging in such conduct. We shall modify his recommended Order accordingly.

[4] Respondent also excepts to the Administrative Law Judge's finding that, "by announcing and subsequently implementing the Sounding Board program, the Company expressly promised and granted a benefit to its employees in order to discourage support for the Union [in violation of Sec. 8(a)(1) of the Act.]" In addition, Respondent excepts to the Administrative Law Judge's finding that discontinuance of Sounding Board constituted a violation of Sec. 8(a)(1) and (3) of the Act "by depriving [employees] of an actual or 'perceived' benefit in reprisal for employee support for the Union." The Charging Party, however, excepts only to that portion of the Administrative Law Judge's recommended remedy and Order which requires Respondent to reinstate and resume implementation of its Sounding Board program. Thus, Respondent's exceptions in this regard are based primarily upon its position that the Sounding Board program was lawfully instituted and lawfully discontinued. By contrast, the Charging Party is in accord with the Administrative Law Judge's findings that Respondent violated Sec. 8(a)(1) of the Act by its implementation of Sounding Board and Sec. 8(a)(3) of the Act by discontinuance, but disagrees with the Administrative Law Judge's conclusion that restoration of Sounding Board would effectuate the policies underlying the Act.

[5] The Administrative Law Judge stated at sec. III,D, par. 4, of his Decision:

> An employer program or policy whereby employees are invited to make recommendations, submit complaints, or simply to have access to management, whether that program or policy is called a sounding board, grievance procedure, open door policy, or by any other name, is a condition and benefit of employment.

Respondent herein be ordered to resume the Sounding Board program.

Upon careful consideration, and contrary to the Administrative Law Judge, we have concluded that the proper remedy herein requires that Respondent's Sounding Board program not be reinstituted. The case herein presents a conflict of values: Do we remedy Respondent's graphic demonstration of its power "to arbitrarily give and to arbitrarily take away, i.e., the 'well-timed . . . suggestion of a fist inside the velvet glove.' *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405 (1964)";[6] or should the remedy emphasize Respondent's attempt to undermine and co-opt the *raison d'etre* of any labor organization—the ability to represent employees in their dealings with management? It is our decision, given the facts of this case, that the latter consideration carries the greater weight. Thus, Respondent's implementation of Sounding Board occurred within the context of, *inter alia*, threats, surveillance, and interrogation—all calculated to make difficult employee support for the Union—while at the same time making Sounding Board a very attractive alternative to representation by a labor organization. Indeed, Respondent's subsequent withdrawal of this program in retaliation for the continued support of the Union by its employees only serves to highlight Respondent's intention to use Sounding Board as a wedge between the Union and the employees, rather than for any lawful purpose. In addition, and although we are well aware that Section 7 of the Act does not protect labor organizations *qua* institutions, it is also the case that a coercive undermining of an employee's right "to form, join, or assist labor organizations" can manifest itself as an attempt to erode the usefulness or purpose of the labor organization itself, rather than as an attack directed at individual, or groups of, employees.[7] Finally, it seems to us that to order a new election—as we shall provide herein—and then reinstate the program that, in large part, was responsible for destroying the laboratory conditions at the time of the first election would serve no useful purpose. Accordingly, and based on all of the above, we conclude that it would not effectuate the purposes of the Act to order Respondent to resume the Sounding Board program.

[6] See sec. IV,A, par. 2, of the Administrative Law Judge's Decision.

[7] See, for example, *Woonsocket Health Center*, 245 NLRB 652 (1979), wherein that respondent formed an employee committee to convey to employees the idea that they did not need a union to represent them because the respondent was willing to discuss and remedy their grievances. The Board concluded that the respondent violated Sec. 8(a)(1) of the Act by its formation of the committee and ordered the respondent to disband it.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, General Electric Company, Winchester, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(j) and reletter the subsequent paragraph accordingly:

"(j) Soliciting employee grievances to induce employees to withdraw their support from, or to cease giving assistance to, the Union."

2. Delete paragraph 2(b) and reletter the remaining paragraphs accordingly.

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein, be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that the election held on November 16, 1979, in Case 5-RC-10982 be, and it hereby is, set aside, and that said case be, and it hereby is, remanded to the Regional Director for Region 5 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT counsel, warn, or threaten employees with discipline or other reprisals because of their union activities.

WE WILL NOT engage in surveillance of union meetings.

WE WILL NOT create the impression of surveillance of employee union activity by telling employees that we know who is involved with the Union.

WE WILL NOT question employees concerning their union membership, attitude, or activities, or those of their fellow employees.

WE WILL NOT solicit employees to report on the union activities of their fellow employees.

WE WILL NOT confiscate union literature from employees.

WE WILL NOT, by word or act, ridicule employees because of their union activity.

WE WILL NOT promise, grant, withhold, or withdraw benefits from employees in order to discourage their membership in International Union of Electrical, Radio, and Machine Workers, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT threaten employees with stricter disciplinary procedures, stricter break or lunch times, loss of access to management, or other worse working conditions if they choose IUE, or any other labor organization, as their bargaining representative.

WE WILL NOT solicit employee grievances to induce employees to withdraw their support from, or cease giving assistance to, International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL expunge from the personnel record of Wayne Grill the counseling which was given to him in August 1979 and all references thereto.

GENERAL ELECTRIC COMPANY

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: These consolidated cases were heard at Winchester, Virginia, on April 21, 22, and 23, 1980. The charge in Case 5-CA-11472, which was filed on September 20, 1979,[1] and amended on November 21, 1979, and the charge in Case 5-CA-11731, which was filed on November 30, 1979, and amended on January 14, 1980, were filed by International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (herein the Union). The complaint in Case 5-CA-11472, which issued on November 28 and was amended at the hearing, and the complaint in Case 5-CA-11731, which issued on January 29, 1980, allege in sum that General Electric Company (herein Respondent or the Company), violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. The gravamen of the complaints, as amended, is that the Company allegedly engaged in surveillance and created the impression of surveillance of union activities, interrogated employees concerning union activity and attitudes, confiscated union literature from employees, solicited employees to report on union activities, threatened employees with reprisal if they selected the Union, assaulted a union organizer and an employee with an automobile, granted and subsequently withdrew benefits in order to discourage support for the Union, and issued a warning or counseling to employee Wayne Grill because of his union activities. The Company's answers deny the commission of the alleged unfair labor practices.

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 5, on October 18 in Case 5-RC-10982, the petition having been filed on September 14, an election by secret ballot was conducted on November 16 among the employees of the Company in an appropriate bargaining unit.[2] The tally of ballots showed that of approximately 239 eligible voters, 96 cast ballots for the Union, and 138 cast ballots against the Union. There were no challenged or void ballots. The Union filed timely objections to the election. On February 13, 1980, the Regional Director issued his Report on Objections, and an Order directing a hearing on Objections 1, 2, 4, 6, 7, and 9 (Objections 3, 5, and 8 having been overruled). The objections which were set down for hearing allege that the Company: (1) interrogated employees concerning their union sympathies, activities, and voting intentions; (2) attempted to, and did assault union organizers with an automobile; (4) attributed its discontinuance of the employee "sounding board" and other improvements in working conditions to the Union's filing of the representation petition in the instant case; (6) threatened employees with more onerous working conditions and loss of benefits if they select union representation; (7) confiscated union literature from employees and otherwise interfered with their solicitation and distribution rights; and (9) threatened employees with a loss of access to and communication with management representatives if they selected the Union. The Regional Director found that the objections were similar to the allegations of the consolidated complaints and raised substantial and material issues which could best be resolved through the medium of a hearing. By his order the Regional Director consolidated the unfair labor practice and the representation cases for the purposes of hearing, ruling, and decision by an administrative law judge. The Regional Director also ordered that after decision by an administrative law judge, the representation case be transferred to and continued before the Board. No exceptions having been filed, the Board *pro forma* adopted the Regional Director's report and order.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally and to file briefs. The General Counsel, the Union, and the Company each filed briefs.[3] Upon the entire record in

[1] All dates herein refer to 1979 unless otherwise indicated.

[2] The unit consists of:

All production and maintenance employees employed by the Company at its Winchester, Virginia facility, excluding all office clerical, technical and professional employees, guards and supervisors as defined in the Act.

[3] In its brief, the Union refers to a statement allegedly made by Company counsel during an off-the-record settlement discussion. That reference is improper and is hereby stricken from the Union's brief. I have also disregarded certain assertions in the Union's brief at pp. 1, 22, and

Continued

this case,[4] and from my observation of the demeanor of the witnesses and my observations of two locations involved in this case,[5] and having considered the briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a New York corporation, is engaged in the manufacture of electrical products and equipment and other products at its Winchester, Virginia, plant, which is the only facility involved in this case. In the operation of its business, the Company annually ships products valued in excess of $50,000 directly from its Winchester facility to points outside of Virginia. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED PREPETITION UNFAIR LABOR PRACTICES

A. *Surveillance, Impression of Surveillance, and Related Allegations*

On May 14 the Union commenced an organizational campaign among the employees at the Winchester plant. The Union distributed literature at plant entrances, a fact which was known to the Company. Third-Shift Modular Foreman Barbara Presgraves, who was presented as a company witness, testified that she was aware of the union activity at the plant. The Union initially conducted meetings of employees at the Lee-Jackson Motel in Winchester. In June the Union scheduled a meeting for third-shift employees at the Holiday Inn-South in Winchester. The meeting was not announced in union literature; rather, the third-shift employees were notified by telephone calls (presumably to their homes) a few days before the scheduled date, the meeting being scheduled for Thursday morning, June 14.

The third shift lets out at 7 a.m. Employees began arriving at the motel about 7:15. The meeting began at or about 7:30 and lasted about 1-1/2 hours. The meeting was conducted in motel room 101, a ground floor corner location on the north side of the motel. Union International Representative Frank Rothweiler, Union Field Representative Gerald Moody, and about 15 employees were present. The window curtains were drawn open, the door was open, and two employees (Dennis Williams and Randy Lewis) were standing in the doorway. Rothweiler and Moody were in the center of the room, between two beds and the remaining employees were gathered around them roughly in a semicircle. Employees James Laing and Frank Fertig were at the rear of the room and therefore were facing in the direction of the door and front window of the room. Rothweiler, Williams, Laing, and Fertig each testified concerning the alleged surveillance of the meeting by Foreman Presgraves. In view of Williams' proximity to the driveway adjacent to the room, and in view of Presgraves' own testimony (to be discussed) to the effect that Williams was involved in the incident which followed, I attach particular significance to Williams' testimony. Williams testified that at or about 7:45 Presgraves' husband, with Presgraves in the front passenger seat (i.e., the farther side from the motel), drove slowly by Room 101. According to Williams, Presgraves "pointed at us and shook her finger" and the Presgraves "circled and come [sic] back by again."

Presgraves, in her testimony, admitted that she and her husband drove by the meeting. However, she testified that they did so only once. Presgraves denied that she shook her finger at anyone and further denied that she had any advance knowledge of the union meeting. According to Presgraves, her husband picked her up at work, she finished her work at or about 7:30 a.m. (about a half hour after the end of the shift), and they then drove to the Holiday Inn-South for breakfast. (The motel is about 1 mile from the plant.) They spent 20 to 30 minutes at breakfast and then returned to their car which was parked in front of the motel restaurant. (The restaurant and motel office are located toward the front of the motel complex. The motel rooms are located to the rear, behind the swimming pool area.) According to Presgraves, her husband began to back out his car preliminary to leaving through one of the two front driveways. However, a large truck was parked alongside their car, another car was behind them (i.e., between Presgraves and the south driveway) and traffic was entering through the north driveway. Therefore, according to Presgraves, her husband swung around to an alleyway on the north side of the restaurant, attempted to go around the restaurant but found that his way was blocked by the swimming pool, and then proceeded to go completely around the motel complex, passing Room 101 where the meeting was in progress. Presgraves testified that she saw employees Williams and Willie Shumaker in front of the room and waved to Williams but that she concluded that "something was wrong" when Williams failed to wave back. According to Presgraves, she thought that this had something to do with the Union. Presgraves testified, in essence, that she regarded Williams' failure to wave back as a matter of such urgency that she telephoned her immediate supervisor, Third-Shift Supervisor William Agnew, at his home to report what she saw. Presgraves also telephoned Kenneth Furcak, the Company's manager of employee relations and training, at his home and reported the event. (Presgraves did not testify as to this conversation, however, Furcak did.) Presgraves testified that that evening at the plant, she and Agnew again discussed the matter and Agnew told her "if at any time you have any knowledge that there is a union meeting of

28, which are unsupported by any record evidence. Specifically, no evidence was presented as to any prior organizational activity of employer animus predating the present campaign or whether and if so, why, the present election was delayed.

[4] Errors in the transcript have been noted and corrected.

[5] With the knowledge and concurrence of all parties, I personally observed these locations and my observations will be discussed in connection with the pertinent alleged unlawful conduct.

any kind going on, do not go near the place where there is a meeting that you know of."

In order to accept and credit Presgraves' explanation as to how she happened to drive by the union meeting it would be necessary to conclude that this came about as a result of a remarkable series of coincidences. Even without careful examination, such a conclusion tends to strain the limits of credulity. In fact Presgraves' explanation fails to hold up under careful examination. Presgraves initially testified that her husband picked her up at work and they went out to breakfast together just as they had been doing on a daily basis since January when her husband became a salesman. However, Presgraves subsequently admitted that she worked on the first shift until June, i.e., until about 2 weeks before the union meeting and that "most of the time" she drove to work with another employee. Presgraves further testified that she and her husband had breakfast at the Holiday Inn-South on only one other occasion in 1979, and that prior to June 14, when she and her husband had breakfast out, they usually ate at Holly Farms, McDonald's, or certain diners. According to Presgraves, her husband was in a hurry on the morning of June 14, because "we were running late." If in fact Mr. Presgraves was pressed for time, it is probable that they would have eaten at a fast food outlet, as was more nearly their custom, rather than to seek out a motel dining room. I have also considered the Company's scale drawing of the motel premises, and with the knowledge and concurrence of the parties, I personally examined the motel premises. I agree with the Union that the physical layout of the motel premises renders it unlikely that Mr. Presgraves, acting on his own, would have chosen to exit by attempting to go around the restaurant. The front parking area is both wide and deep. (The parking area appears to extend for about 50 feet from building to street.) Each of the front driveways is sufficiently wide for two lanes of traffic. In order to exit by going around the north side of the restaurant (as Mr. Presgraves did) he would first have to weave around an area of shrubbery (not shown on the Company's diagram) across the north alleyway from the restaurant and then past a garbage compactor. The north alleyway is quite narrow in the area adjacent to the restaurant and this fact would have been obvious to Mr. Presgraves. Presgraves was driving a large car (a four-door Oldsmobile), and this fact renders it even more unlikely that, absent a request by his wife, he would have chosen to exit by going around the restaurant.

As will be discussed, evidence concerning subsequent events indicates that the Company actively solicited employees to report on union activities. I credit the testimony of Dennis Williams concerning the events of June 14.[6] I further find that Presgraves learned in advance that there would be a union meeting, and the location and time of that meeting; that acting on behalf of the Company she observed and reported on the meeting to her supervisors; and that she observed the meeting in a conspicuous manner, pointing and shaking her finger and driving by twice, all for the purpose of intimidating the Company's employees in the exercise of their statutory rights. Therefore, the Company, by Presgraves, violated Section 8(a)(1) of the Act by engaging in surveillance of employee union activity. *Delta Faucet Company, A Division of Masco Corporation of Indiana*, 251 NLRB 394 (1980).

Employee Jackie Dellinger testified concerning a conversation which she allegedly had with then First-Shift Modular Foreman Charles Breeden in late June, the morning after the first union meeting (so far as she knew) for the first-shift employees. (Frank Rothweiler testified that the first meeting for first-shift employees was held on the afternoon of June 14.) Dellinger did not attend that meeting. She testified that she was standing near a machine with another employee when Foreman Breeden came up and asked, "who all went to the union meeting last night." By this time a third employee had come by. The two employees, besides Dellinger, were Pat Rhodes and Nanny Grimes. All three worked under the supervision of Breeden. According to Dellinger:

> of course, we all replied in the negative and one of the girls walked over to fill up her machine and the other girl replied in the negative and she walked over to the line and I replied in the negative and when I replied to Charlie that I had not gone he said, I know, we already have a list of names of who was there.

Dellinger testified that Rhodes and Grimes had already left when Breeden remarked about the "list." Dellinger subsequently became a union in-plant organizer and the Union so informed the Company by letter dated September 11. However, there is no evidence that the Union had knowledge of Dellinger's attitude toward the Union in June. Neither Rhodes nor Grimes was presented as a witness and there is no evidence concerning their attitude toward the Union.

Foreman Breeden, who was presented as a company witness, categorically denied that he ever asked Del-

[6] Presgraves' husband was not called as a witness. The Union states in its brief (fn. 3) that he was present during Presgraves' testimony. The record does not indicate his presence, nor, if he was present, was that fact called to my attention. However, the record does not indicate any reason why he could not have been called as a witness. The Company's failure to present testimony by Mr. Presgraves may properly be considered in determining the credibility questions presented. The Company argues in its brief that all four General Counsel witnesses should be discredited because of discrepancies in their versions of the events. As indicated, I have found Williams' testimony to be particularly significant. Frank Rothweiler did not see Presgraves go by the first time, other than to note a passing car. Rothweiler did not know Presgraves and he was busy talking to the employees. Therefore it is not surprising that he did not see Presgraves point and shake her finger. Rothweiler testified that after the employees informed him that a supervisor passed by, he saw "the car make another return trip." Therefore Rothweiler substantially corroborated Williams' testimony. As for Laing and Fertig, their description of the events partially corroborated and partially differed from that of Williams. However, Laing and Fertig were in the rear of Room 101 and, therefore, they were not in as good a position as Williams to observe the Presgraves' car. The Company also attaches significance to a joint, unsworn statement which was furnished to the Union, and signed by nine employees who were present, concerning the alleged surveillance. However it is evident that the statement does not purport to be a detailed description of the events. Indeed it is unlikely that nine human beings would ever agree on a detailed description of a particular event. Therefore, I do not attach significance to the fact that the statement does not indicate that Presgraves pointed or shook her finger, or went by twice.

linger, Rhodes, Grimes, or any other employee whether they attended a union meeting, or ever said that he knew who attended a union meeting. Breeden testified that he did not know of any union meeting in June and that he did not discuss the Union with Dellinger in June. Breeden testified that they talked about the Union in October, when Dellinger suggested that he might want to read a union handbill. In the absence of testimony by Rhodes or Grimes, the pertinent allegations present a "one on one" situation; i.e., Dellinger's version as against that of Breeden. Dellinger's version is somewhat improbable in one respect. If, as indicated by Dellinger, "we all of course answered in the negative," then it is unlikely that Dellinger would have waited until the other employees left and then repeated her answer. Rather, it is more likely that she would have let well enough alone and gone back to work like the other employees. In other words, if Breeden did refer to a "list," it is likely, given the sequence of the conversation, that all three employees would still have been present. Dellinger's version of the conversation suggests an awareness that Rhodes and Grimes, if called as witnesses, would not have corroborated her testimony. I am not persuaded that the General Counsel has shown by a preponderance of the credible evidence that the conversation took place as testified by Dellinger. Therefore I am recommending that the allegations of paragraphs 5(c) and (d) of the complaint in Case 5-CA-11472 with respect to Breeden be dismissed.

As indicated, employees James Laing and Frank Fertig were present at the June 14 union meeting for third-shift employees. The two employees normally rode to and from work together, and that fact was known to Third-shift Supervisor William Agnew. Laing testified that on about June 27, Agnew summoned him to Agnew's office and talked to him about union cards. According to Laing, Agnew asked if he signed a card, and he answered that he had not, and that he was "still debating." In fact, Laing had signed a card. Laing and Fertig testified in sum that the next day they were talking with Agnew about the Union when Fertig told Agnew "you know Jim and I signed union cards. Agnew answered that Laing told him he did not sign a card. In his investigatory affidavit to the Board, Fertig stated that Agnew never discussed union cards with him. Laing testified that on about July 16, Agnew asked him if he knew that "Frank still had strong feelings for the Union." According to Laing he answered, "No sir, I don't." Agnew, who was presented as a company witness, testified that in June and subsequently he spoke individually to 10 employees who worked directly under his supervision, including Laing, concerning the subject of union cards. (Agnew did not indicate that he had such a conversation with Fertig.) According to Agnew, he summoned Laing to his office, and told him that he should not be "pressured" into signing a union card, that it should be his own free choice, and that if he felt that someone was pressuring him and he reported it to Agnew, then Agnew would "try and do something about it." Agnew also "cautioned" Laing that if he signed a union card he should try to get a receipt for it in case he changed his mind. Agnew testified in sum that he said the same things to the other employees. According to Agnew, Laing stated at one point that he did not sign a card, whereupon Agnew answered that he did not want that information. However, Agnew testified that as a result of conversations with employees, he formed opinions as to the attitude of individual employees toward the Union and passed those opinions on to higher management. Agnew, in his testimony, denied that he asked Laing whether he signed a card or confronted him about signing a card, or asked if Fertig still had strong feelings about the Union. By its letter dated September 11, the Union informed the Company that Laing and Fertig were in-plant organizers. Agnew testified that until that time he was of the opinion, based on conversations with Laing, that Laing was undecided, and that he did not know that Laing was active on behalf of the Union. Agnew testified that in October he again talked to employees about signing union cards.

It is evident from Agnew's own testimony that he was intensely interested in learning the union attitudes of the employees under his supervision, that he carefully monitored indications of those attitudes on a continuing basis, and that he systematically reported his findings to higher management. It is also evident that Agnew was well trained in the uses of industrial psychology. Foreman Harold Fincham testified that throughout the union campaign the Company conducted meetings for supervisory personnel for the purpose of training them how to conduct themselves during the campaign. These meetings normally lasted 2 hours and were conducted once or twice each week. According to Fincham they included "role modeling." It is unlikely that the Company spent all of this time simply telling the supervisors what they could not do. It is also evident that Agnew did not accept surface indications of union support, e.g., the wearing of union insignia, as conclusive proof that the employee would vote for the Union. Rather, Agnew attached more significance to opinions expressed by employees in conversations with him. Thus, Agnew testified that even after the union designated employee Nelly West as a volunteer organizer, he still listed her as "a question mark," because in conversations she expressed views which he considered to be antiunion. Further, it is evident from Agnew's testimony and that of the employees, that in conversing with employees, Agnew attached little value to blunt questions which simply called for a yes or no answer, e.g., did you sign a union card? Rather, Agnew preferred, by the use of provocative questions or remarks, to draw the employee into an expression of his or her own feelings.

In light of Agnew's overall approach, it is unlikely that Agnew would have asked Laing, point blank, whether he signed a union card. Such an approach would have made it too easy for Laing to simply answer "no" (whether the answer was true or false) and would not have given Agnew an adequate appraisal (in Agnew's view) of Laing's sentiments. Rather, it is more likely that Agnew would have engaged in a conversation concerning union cards which was carefully calculated to draw out a spontaneous response from the employee. However, it would have been entirely in character for Agnew to have asked Laing in late July whether Frank

Fertig still had strong feelings for the Union. Agnew admitted in his testimony that he was not sure where Fertig stood because Fertig made equivocal remarks which kept him guessing. By posing a provocative question to Laing he hoped to kill two birds with one stone, i.e., by evoking a response which would indicate the union attitudes of both Fertig and Laing. As matters turned out, Laing was wise enough to give a noncommittal answer. However, Agnew evidently felt that it was worth a try. I credit the testimony of Agnew concerning his first conversation with Laing. However, I credit the testimony of Laing and Fertig concerning their conversation with Laing the next day and I credit Laing concerning his conversation with Agnew in mid-July. I find that the Company, by Agnew, violated Section 8(a)(1) of the Act by interrogating Laing concerning the union attitude and activities of Fertig. Agnew had no legitimate reason for questioning employees about the union attitude or activities of their fellow employees. As has been and will be discussed, Agnew's questioning occurred in the context of other employer unfair labor practices. Moreover, Agnew gave no assurance against employer reprisal, nor did he indicate that Laing was free not to answer the question. In these circumstances the interrogation was coercive and unlawful. With respect to Agnew's conversation with Laing and Fertig, Agnew did not engage in any unlawful conduct. Rather Agnew was simply responding to Fertig's remark on the basis of what Laing told him the previous day. With respect to Agnew's first conversation with Laing, there remains the question of whether on the basis of Agnew's credited version of that conversation, the Company violated the Act. That question is closely related to the issue presented by paragraph 5(i) of the complaint in Case 5-CA-11472, i.e., the alleged solicitation of employees to report on union activities of other employees. Therefore I shall again take up the Agnew matter in connection with that allegation.

In late July Frank Fertig and Manager of Employee Relations Kenneth Furcak had a long conversation in the plant cafeteria. No one else was involved in the conversation. Fertig and Furcak each testified as to their version of the conversation. Much of the substance of the conversation is undisputed. Both testified that they talked about Fertig's grievance concerning overtime pay, about the termination of employee Pat Campbell, about the IUE—General Electric National Contract, and about a job for a relative of Fertig. However, their testimony differed sharply in certain other respects. According to Fertig, when they discussed whether a union could help Campbell regain his job, Furcak said that he was "well aware" of Frank Rothweiler over at the Lee-Jackson Motel, that he knew that Fertig "was a part of it," that he (Furcak) had his ways of finding things out, and that "this union is not going to get in and I'll do whatever I have to do to see that this union don't [sic] get in." Furcak in his testimony denied that he made these statements. According to Furcak, Fertig raised the subject of the Union, and in discussing the Company's discontinuance of a practice of giving packing crate wood to employees, said: "I'm really upset about the wood and I'm going to get even with you." Upon consideration of the overall context in which this conversation took place, I am not persuaded that either version of the conversation is wholly credible. Rather, both witnesses indicated a tendency toward exaggeration. As indicated by testimony of Supervisor Agnew, previously discussed, Fertig tended to be equivocal when discussing the Union with Agnew. If so, then it is unlikely that in late July, some 6 weeks before the Union identified him as a volunteer organizer, that Fertig would have told a higher official that he would "get even with you." As for Fertig's version of the conversation, the overall credited evidence indicates that while the Company waged a persistent and pervasive antiunion campaign, that campaign was generally conducted on a sophisticated level, permeated with such subtle phrases as the "third party." Furcak was the person who conducted the training sessions for supervisors, previously discussed. I find it unlikely that he would have spoken in quite the blunt language attributed to him by Fertig. Indeed, if either Furcak or Fertig had used the blunt language attributed to one by the other, then it is unlikely that they would have continued the conversation to discuss among other things, the prospects of a job for Fertig's relative. Therefore, I am recommending that the allegations of paragraphs 5(f) and (g) of the complaint in Case 5-CA-11472 be dismissed.

B. *Solicitation of Employee Reports*

In August the Company issued a "bulletin" to its employees, dated August 17, over the signature of Plant Manager Milton Patterson. Foremen handed out copies of the bulletin to employees, and the bulletin was posted by the Company on plant bulletin boards. The text of the notice was as follows:

> It's increasingly obvious that the outside IUE organizer and some union supporters are getting concerned about the lack of interest shown by most employees. *In the past few days, there have been reported instances of some employees being pressured to sign union authorization cards; there have been reports of threats, possible tire slashing and other forms of harassment or vandalism; and there have also been reports that the union would be attempting to make home visits. I'm sure most of you would resent such invasion of your privacy.* [Emphasis supplied.]
>
> The use of these kinds of tactics, along with all kinds of empty promises that the union would fix this or that and a renewed effort to cause friction and unrest, appear to me to be an indication the union is making a last ditch stand to drum up support.
>
> *I don't know who may be responsible for causing possible threats and harassment, as reported, but his [sic] type of conduct is unlawful and will not be condoned.* [Emphasis supplied.]
>
> *If anyone is unduly pressured or threatened to sign a card, please report this immediately to your supervisor, Ken Furcak, or me & we will take appropriate action.* Also, if you hear rumors of something that just doesn't sound right, make sure you get the facts from us. [Emphasis supplied.]

> It's unfortunate that organizing campaigns often create problems, unrest and friction which work in the opposite direction of team work and mutual respects, but it does happen. Please remember that signing a card might only encourage the organizer and his supporters to try even harder.

The August 17 bulletin constituted an unlawful solicitation of employees to report on their fellow employees' activities in or on behalf of the Union. The Board has repeatedly held that such language, and specifically, language such as or similar to the Company's request that employees report undue pressure to sign a card, "has the potential dual effect of encouraging employees to report to [the employer] the identity of union card solicitors who in any way approach employees in a manner subjectively offensive to the solicited employees, and of correspondingly discouraging card solicitors in their protected organizational activities." *W. F. Hall Printing Company*, 250 NLRB 803 (1980); *Colony Printing and Labeling, Inc.*, 249 NLRB 223 (1980); *J. H. Block & Co., Inc.*, 247 NLRB 262 (1980), and cases cited in fn. 3 therein.[7] In the present case, the Company's bulletin places heavy emphasis on union solicitation away from the work place. Indeed the bulletin makes no reference to solicitation which might interfere with work. However, the bulletin refers to reports of attempted home visits, adding that "I'm sure most of you would resent such invasion of your privacy." In this context, the Company's solicitation of reports of conduct, vaguely described as undue pressure, could reasonably be construed as encouraging reports of home visits or even of requests to visit employees' homes, although such organizational efforts constitute conduct which is protected by the Act. See *N.L.R.B.* v. *Babcock and Wilcox Co.*, 351 U.S. 105, 113 (1956). In the opening paragraph of its bulletin, the Company places "pressure" in a separate category from "threats, possible tire slashing and other forms of harassment or vandalism." In sum, as will also be discussed in connection with the counseling of employee Wayne Grill, the terms "pressure" and "harassment" could reasonably be interpreted as meaning whatever the Company or individual employees thought they meant and the Company's policy not only tended to but did in fact impinge upon its employees' lawful self-organizational rights. Moreover, as the Board made clear in *J. H. Block, supra*, even if an employer receives reports of misconduct which do not constitute protected activity under the Act, that fact would not immunize solicitation of reports which are not strictly limited to unlawful or otherwise unprotected conduct.[8]

This brings me back to the Agnew matter. I find, on the basis of Agnew's testimony, that the Company through Agnew violated Section 8(a)(1) of the Act by soliciting James Laing and other employees to report to Agnew if they felt that anyone was "pressuring" them to sign union cards.[9] I further find that the manner in which Agnew conducted these interviews constituted unlawful interrogation. Agnew summoned the employees individually into his office, warned them against being pressured into signing a union card, urged them to report such pressure, and advised them to obtain a receipt if they did sign a card. In these circumstances, the employees were impliedly called upon to give some response which would indicate whether or not they had signed a card. See *Larand Leisurelies, Inc.* v. *N.L.R.B.*, 523 F.2d 814, 819 (6th Cir. 1975). Indeed, Laing so understood Agnew and responded accordingly. In sum, I find that the Company, through Agnew, violated Section 8(a)(1) of the Act by interrogating employees concerning their union membership, activities, and attitudes and by soliciting employees to report upon the union activities of their fellow employees.

C. *The Counseling of Wayne Grill*

On August 27, second-shift employee Wayne Grill was summoned to the office of Raymond Stalker, who at that time was manager of shop operations. Second-Shift Supervisor Jerry Hutton was present. Grill, who was presented as a General Counsel witness, testified concerning the interview. According to Grill, Stalker told him that he "had a report from some individual in the plant" that Grill had been "harassing" them and "causing them not to be able to do their job to the best of their ability," and that if any further reports were brought to Stalker's attention, "further disciplinary action could be taken." Grill asked who he allegedly harassed, what about, and when. Stalker avoided answering any of Grill's questions. Instead Stalker repeated his warning of further action. Stalker also asked Grill to sign a written entry in Grill's personnel record. Grill signed the entry, although he protested that he had not been given a chance to defend himself. The entry, which had been written out by Stalker before the interview, stated as follows:

> I talked with Wayne Grill concerning his name being brought to our attention as having been harassing other employees. I reviewed with him that

[7] The Company's reliance on *Whitecraft Houseboat Division, North American Rockwell Corp.*, 195 NLRB 1046, 1048 (1972), is misplaced. That Decision was impliedly overruled in *Liberty Nursing Homes, Inc.*, 245 NLRB 1194 (1979). It is immaterial that the Board did so by affirming the Administrative Law Judge's Decision, rather than through the text of its own Decision. See *Leroy W. Craw Jr., et al. d/b/a Craw & Son*, 241 NLRB 388 (1979). *Whitecraft* also runs counter to a long line of prior and subsequent Board and court authority. See cases cited above. Moreover, unlike the present case, the employer's notice in *Whitecraft* referred in part to "trouble on the job" (although a similar reference did not immunize the notice which the Board found unlawful in *Colony Printing, supra*). As will be discussed, the principal thrust of the Company's notice is directed at union solicitation away from the workplace.

[8] During the present hearing, I permitted the General Counsel to amend the pertinent allegation of the complaint in a substantial respect. I permitted the amendment on the condition that absent evidence to the contrary, it would be presumed that the Company did in fact receive the reports described in the bulletin. I did not, as suggested in the Company's brief, state that I would presume that the reports were true. Indeed the bulletin itself is equivocal in this regard, e.g., referring to "possible" tire slashing and other forms of harassment or vandalism. As indicated, the reports described in the bulletin expressly refer to lawful organizational activity, and the bulletin uses phrases which are sufficiently vague as to arguably include lawful activity.

[9] Indeed the Company concedes in its brief that such "one-on-one" interviews tend to be even more coercive than a general announcement by the employer.

> on lunches and breaks (where he was not interfering with other people performing their job duties at their work stations) he was free to discuss what he wanted with anyone. However, he was not to be interfering with people at their work stations and I reminded Wayne that he had been cautioned earlier about remaining in his work area.

As indicated by its language, the entry purported to be a recitation of what Stalker told Grill. It did not contain any admission or other purported statement by Grill concerning the alleged harassment. Grill asked for a meeting with Plant Manager Patterson. No meeting was arranged at that time. However, Grill subsequently approached Patterson about the matter. In early September, Grill met with Patterson in the latter's office. Grill described his interview with Stalker. Patterson started out by saying that there were "101 reasons why we don't need a union." Patterson told Grill that this was a "warning about nothing." However, Patterson said that it had to do with a complaint by some person that Grill was harassing them about the Union. Patterson then asked Grill about any complaints he might have concerning the working conditions in the plant. Patterson then prepared a memo concerning their interview, which was signed by Grill and entered in Grill's personnel record immediately following the entry by Stalker. Patterson's entry stated as follows:

> Met with Wayne at his request, pertaining to the above documentation. Wayne felt there were two sets of rules—one for him and one for others. I advised Wayne that he would be treated no differently than anybody else in the application of our plant practices and work rules. If he is innocent of any wrong doing, as he states, he will not have any problem. I assured Wayne that it has never been the intent of the Winchester management team to single out any individual without just cause.

As with the August 27 interview, the entry substantially consisted of a recitation of what the interviewer allegedly told Grill.[10]

Patterson was not presented as a witness. Supervisor Hutton was presented as a company witness, but he did not testify concerning the August 27 interview. Stalker, who was presented as a company witness, substantially confirmed Grill's account of the interview. Stalker admitted that he did not identify the person allegedly harassed, or the circumstances, or the subject of conversation. According to Stalker, Grill stated that he was not bothering other people. Stalker testified that he told Grill that he had received a complaint that Grill was harassing another employee and interfering with his work, that Grill should stop bothering people and interfering with their work on "non production matters," that Grill was free to talk in the break or lunch area during breaks and lunch time, and in the cafeteria, and that Grill had previously been spoken to about not being in his work area. I credit the testimony of Grill as supplemented by the testimony of Stalker with respect to the August 27 interview.

Supervisor Hutton testified that in August forklift operator J. C. Lambert complained to him that Grill was coming into Lambert's work area and talking to him about the Union, "which was preventing him from performing his job duties." Lambert asked if Hutton could do anything about it. Hutton told Lambert to "put that in the form of a statement," and that Hutton would present that to Stalker. According to the collective testimony of Hutton, Stalker, and Modular Foreman Michael Misciewicz, who was Lambert's immediate supervisor, Lambert gave a typed statement to Misciewicz, who gave it to Hutton, who in turn gave it to Stalker, who without ever talking to Lambert, told Hutton that the statement was incomplete and did not point out the problem. The text of the statement, which was dated August 22 and purportedly signed by Lambert, stated as follows:

> To whom it may concern. There have been employees who has been pressure [sic] me about the union. I am not interested in the union. I would like your help to solve this problem.

According to Hutton, about 2 days later Lambert handed him a second typed statement which Hutton turned over to Stalker. The statement was dated August 24 and purportedly signed by Lambert.[11] The text of the statement was as follows:

> To whom it may concern. There has been an employee at GE who has been pressure [sic] me about the Union. This person name is Wayne Grill. He has been talking to me about the good points if we had a Union. Than he would talk about the bad points without a Union. For example, Job Security. He said that with a Union our job would be more safe. But without a Union we can get fired easy if we make the wrong move. Plus he said that one person is doing four people jobs. But a Union will decrease this matter, where one person do one job. So in my behalf I would like this problem to be taking care of. This matter does disturb me in my work.

Stalker testified in sum that he conducted the August 27 interview with Grill and made his entry in Grill's personnel file on the basis of the two Lambert statements and Hutton's verbal report of what Lambert allegedly told him, and that Stalker's action constituted a "counseling" of Grill. Counseling constitutes the first formal step in the Company's progressive disciplinary procedure. The next formal steps, if the problem continues, are verbal warning, written warning, second written warning, third written warning accompanied by a 3-day disciplinary layoff, and finally discharge. All of these formal measures are recorded in the employee's personnel record. The Company introduced in evidence personnel

[10] I do not regard the reference to two sets of rules as constituting an admission of misconduct by Grill. In the circumstances Grill had at least reasonable cause to believe that he was being treated in a discriminatory manner.

[11] The signatures on the two statements were dissimilar. The first was in script and the second was printed. No evidence was presented which would identify either handwriting.

records of other employees which contained reference to the employee being away from his work area or talking instead of working. However, none of the entries made reference to alleged harassment of other employees, nor did the Company present any other evidence that any employee, other than Grill on August 27, had been disciplined for such conduct. Stalker testified that employees are permitted to talk to each other on work time and in work areas, to the extent that such talk does not interfere with their job. Supervisor Hutton, in his testimony, admitted that Grill had several work areas and that in going from one to another he might have passed by Lambert's work station.

As indicated, the credited testimony establishes that Plant Manager Patterson told Grill that the "warning" concerned harassment of someone about the Union, and that Grill, during his disciplinary interview, denied that he bothered anyone. When one employee talks to someone about a union, such talk, whether or not characterized as "harassment," constitutes activity which is protected by Section 7 of the Act, unless that talk falls within certain categories, e.g., threats of violence, which are unprotected. Therefore, the counseling of Grill must be deemed unlawful in the absence of probative evidence which would indicate that the Company, in a nondiscriminatory manner, disciplined Grill for misconduct which is excluded from the protection of the Act. The Company failed to present such evidence. Instead, the Company presented an assortment of inconsistent hearsay which, in significant part, tended to indicate that Grill was "counseled" for engaging in lawful, protected activity. Significantly, the Company failed to present employee Lambert as a witness, although there is no indication that he was unavailable.[12] Lambert's absence becomes particularly significant when one carefully considers the typed statements which Lambert allegedly furnished to the Company. According to company witnesses, Stalker called for the second statement because the first was incomplete and failed to point out the problem. However, both the first and second statement are devoid of any indication that Grill spoke to Lambert while either of them was at work or that Grill engaged in any other misconduct. Neither statement even indicates where or when Grill allegedly spoke to Lambert. Rather, the second statement purports to indicate that Lambert was disturbed in his work, not because of the time or place or manner of their conversations, but because Lambert was subjectively concerned about the merits of the arguments advanced by Grill. None of those purported arguments contained threats of reprisal or other improper statements. If Grill were charged with interfering with Lambert's work, and Stalker believed that the first statement failed to point out the problem, then it is unlikely that Stalker would have "counseled" Grill on the basis of a statement which failed to indicate that the alleged harassment took place on the job. Rather, the text of the statements, coupled with the Company's conspicuous failure to call Lambert as a witness, tends to indicate either that Lambert never accused Grill of interfering with his work or that Lambert backed down on such an assertion when confronted with a request that he furnish a written statement.[13]

I do not credit the hearsay testimony of the company supervisors to the effect that Lambert either complained or adhered to a complaint that Grill was bothering him at Lambert's work station. I find that Stalker, without even giving Grill an opportunity to be heard on the matter, decided to "counsel" Grill on the basis of an unsubstantiated report that Grill had subjectively disturbed another employee by advancing arguments in favor of the Union, and that Stalker did so without regard to the time, place, or manner of the alleged harassment. Therefore, the Company violated Section 8(a)(1) and (3) of the Act by disciplining Grill on the basis of a report which indicated that Grill was engaging in lawful union organizational activity. In these circumstances it is immaterial whether Grill spoke to Lambert on or off the job or, indeed, whether he spoke to Lambert at all. *N.L.R.B.* v. *Link-Belt Co.*, 311 U.S. 584, 589-90 (1941). The Company correctly points out in its brief that Grill "did not testify that he was innocent of inhibiting Mr. Lambert from performing his duties." However, such testimony would have been akin to pounding a pillow. Grill was never confronted with the particulars of the alleged harassment, Lambert was not presented as a witness, and the only evidence presented by the Company on the merits of the allegation consisted of hearsay testimony and documents which, insofar as purportedly signed by Lambert, tended to indicate that Grill was engaged in protected union activity. The Company's own evidence demonstrated the unlawfulness of its actions. Therefore, there was nothing which warranted denial. I further find that the Company's action constituted not only a "counseling" under the Company's disciplinary procedure, but also, in plain English, a warning and a threat of further disciplinary action in the event that the Company received further reports that Grill was engaging in union organizational activity. Moreover, "counseling" is recorded in the employee's personnel record, and may be used as the basis for further disciplinary action. Therefore, counseling is potentially more serious than an unrecorded verbal warning.

[12] At one point in Stalker's testimony, he made vague reference to "possible reprisal," without spelling out any particulars. I find that the Company failed to come forward with any valid reason why Lambert could not have been subpenaed to testify in this proceeding.

[13] The second statement differed from the first in that it contained the name of a specific employee. In its brief the Company argues that its August 17 bulletin was lawful, *inter alia*, because it "does not request the identity of the individuals performing the threatened or pressured acts." In any event that argument is without merit as a matter of law. See *W. F. Hall Printing Co., supra*. The Grill "counseling" occurred within a matter of days after the Company issued its bulletin in which it solicited reports of "harassment." As indicated, the Company did not previously discipline employees on that ground. These circumstances tend to indicate that the Grill counseling was a result of the Company's own unlawful policy, that the Company intended to effectuate that policy, i.e., "take appropriate action" through its disciplinary procedure, and that such effectuation necessarily entailed identification of the persons involved. The Grill matter also tends to confirm what was already apparent from the language of the bulletin; namely, that such terms as "pressured" and "harassment" were sufficiently vague as to cover any solicitation on behalf of the Union, depending upon the subjective reaction of the persons involved.

D. *The Employee Sounding Board*

The Company mailed a letter to each of its employees, dated August 10, over the signature of Plant Manager Patterson. The text of the letter was as follows:

> Dear Fellow Lampmaker:
>
> *This past week we received the Job Information Survey Report which summarized your thoughts and concerns expressed during the recent employee survey.*
>
> I have just reviewed the preliminary results of the survey and I would first like to thank all employees who participated for their frank, straightforward remarks. *The survey noted several areas of concern which require our attention.*
>
> *Over the next few weeks, we will be implementing programs to obtain concrete improvements in these areas.* I ask for your continued cooperation plus any of your thoughts and ideas on how we can further improve. *Here's one idea I have: I'd like to ask some of you to serve on special employee sounding boards.* And I'll be looking for other ways to get employees more involved in decisions that affect all of us at Winchester.
>
> Meanwhile, I will be holding a series of informative meetings to discuss the survey results in more detail. We will talk about some of these ideas then.
>
> Again, I would like to personally thank all who participated, as you have identified a number of areas where working together, we can and will improve our plant.
>
> For those of you who were not involved in this study, it was similar to the other studies we've had every year. This particular survey consisted of group interviews, rather than individuals, lasting about two hours per session, July 17–18, 1979. Representatives from Nela Park interviewed 59 randomly-chosen hourly employees, 10 non-exempt, and 12 exempt employees. A survey questionnaire was filled in individually by each participant; no signature was required. But most of the time was spent discussing employee concerns.
>
> I am confident in the days ahead, our Winchester "Team Spirit" will prevail and we will continue to achieve our objective of being the "BEST LAMP PLANT IN THE WORLD." [Emphasis supplied.]

On or about September 24, approximately 10 days after the Union filed its election petition, the Company posted a notice on plant bulletin boards over the signature of Employee Relations Manager Furcak. The text of the notice was as follows:

> *Upon receipt of the I.U.E. petition from the N.L.R.B. last week, we were advised by our legal counsel to discontinue plans of implementing the Employee Sounding Board.*
>
> *We're sorry we didn't get the opportunity to experiment with the Sounding Board concept, but in view of the petition, the Company would run the risk of possible legal implications.*
>
> I would like to thank everyone for their expressed interest and cooperation in trying to make the Employee Sounding Board a part of the Winchester Lamp Plant operations and I sincerely hope a future opportunity will be available to consider it again. [Emphasis supplied.]

The General Counsel and the Union contend that the first notice constituted an unlawful promise or grant of benefits in order to discourage support for the Union and that the second notice constituted unlawful discontinuance of an actual or "perceived" benefit for the same purpose. The Union further contends that by the latter action the Company unlawfully interfered with the conduct of the election. As the two alleged unfair labor practices are closely related, it will be necessary to some extent, to consider them together.

In his testimony, Manager Furcak defined the Sounding Board as "when a group of employees, along with some representatives of management get together to deal with a particular subject within a prescribed period of time, within set parameters and they make recommendations back to the Plant Manager which he can act on accordingly or not." Furcak testified that he learned of the sounding board concept through reading and attendance at seminars in 1977 and 1978. Furcak testified that in February 1979, about 5 months after he attended a company sponsored seminar where the subject was discussed, he discussed the sounding board concept with Plant Manager Patterson, and Patterson agreed to make that part of Furcak's 1979 program. However, according to Furcak, they did not then select a topic for a sounding board. Furcak further testified that during the next 4 months he attended company sponsored presentations at which he learned "how a Sounding Board really works." Furcak testified that at the last such presentation, which took place on May 31 and June 1 (shortly after the Union commenced its organizational campaign), he learned from the Company's home office that there would be an "employee attitude survey" at the Winchester plant in July, which might suggest "an identifiable subject" for a sounding board. The Company had last taken such a survey at the plant in July 1977; however, the evidence does not indicate what if anything was done as a result of that survey. The current survey was conducted in July. By early August, according to Furcak, the Company received the returns from the survey, which indicated that the principal areas of employee complaints were ambiguous language in the employee handbook, perceived favoritism, and excessive overtime. At this point the Company sent out the August 10 letter to its employees. In early September the Company made available "self-nomination" forms by which individual employees could indicate their interest in serving on "the upcoming 'Sounding Board' on rewriting/updating our plant handbook." According to Furcak, the Company had by September 24 received responses from about 40 employees. In September the Company also assembled the employees by shifts, to meetings at which the Company discussed the sounding board. According to Furcak, the Company informed the employees that the purpose of the sounding board was to take care of language in the handbook which had "led to misunderstandings." Employee Jackie Dellinger testified that at

one meeting, a company spokesman from another plant told the employees that the purpose of the sounding board was to rewrite the handbook and to establish an intermediate area between the employees and management to help overcome problems in the plant. Dellinger also testified that, several weeks earlier, Furcak told her that the sounding board would take care of problems in the plant between the employees and management. Kenneth Grill, who submitted a self-nomination form, testified that the Company spokesman indicated that the purpose of the sounding board was to revise the handbook and take care of employee complaints. However, in his investigatory affidavit to the Board, Grill stated that the spokesman referred only to changing the handbook. In fact, the differences between these versions of the meetings are more semantic than real. Manager Furcak testified that the language problems concerned such substantive matters as what constituted a reasonable amount of overtime, and the difference between early reporting and early call in, which in turn affected the manner in which employees were paid. In early September the Company issued written instructions to its supervisory personnel concerning the sounding board. The Company informed the supervisors that "we cannot change any GE pay practices and long-standing personnel policies," but we can . . . put in more language for further clarification," and "we can look at some of our plant practices for revision" such as shift transfer, promotion policy, lateral and downgrade policy, and layoff and recall procedures.

Furcak's testimony concerning the events leading up to the August 10 letter was uncorroborated by any other testimony or documentary evidence. The company counsel, through questioning of his witness, suggested that the Company "implemented" the sounding board in February, i.e., prior to the union organizational campaign, when according to Furcak, Plant Manager Patterson agreed to make a sounding board a part of Furcak's 1979 program. If so, this would constitute a somewhat novel definition of that term. The verb "implement" means "to carry out," or "to give practical effect to and ensure of actual fulfillment by concrete measures." (See Webster's New Collegiate Dictionary, G & C Merriam Company (1973).) Furcak, in his testimony, was unable to explain how the Company could implement a program which necessarily involved employee participation if the employees were unaware of the existence of such a program. Furcak's own shifting testimony indicated that he had some reservations about his counsel's concept of implementation. Furcak initially testified that the Company implemented the sounding board in February, then testified that "we never did implement it or have any further implementation," and still later that "I implemented it" after issuing instructions to supervisors in early September. The Company's own announcement of August 10 referred to implementation of programs including the sounding board "over the next few weeks." More to the point, Furcak testified that during the year in conversations with employees he told them that the Company was "considering" the sounding board. Furcak's own narrative indicates that in fact the Company did not give serious consideration to a sounding board until after the Union commenced its organizational campaign. The evidence indicates that the Company regarded an employee attitude survey as a necessary prerequisite to any decision as to whether a sounding board was warranted. Thus, if the survey indicated that the employees were not significantly dissatisfied with their terms and conditions of employment, or if their dissatisfaction concerned matters which could not be handled by a sounding board, such as general pay scales, then a sounding board would serve no useful purpose. Between July 1977 and July 1979 the Company did not even bother to take such a survey. Rather, according to Furcak, he spent his time attending seminars and conferences and, in the process, learning about sounding boards. I find that the Company decided to implement a sounding board after becoming aware that the Union had undertaken an extensive organizational campaign. I further find, in light of the timing of the Company's actions, the Company's false explanation for such timing, the absence of any credible and lawful explanation for such timing, and the Company's demonstrated hostility and resistance (in some respects unlawful) to the union organization campaign, that the Company announced and implemented the sounding board in order to discourage employee support for the Union. Such implementation took place in September, when the Company issued instructions to its supervisors concerning the sounding board, distributed and received self-nomination forms from its employees and informed its employees concerning the purposes and functions of the sounding board.

The employee attitude survey, when viewed in light of the Company's subsequent promise in its August 10 letter "to obtain concrete improvements" in areas of employee concern, constituted a solicitation of employee grievances which carried with it the implied promise of redress of employee grievances. I find, for essentially the same reasons as indicated with respect to the August 10 letter, that the Company conducted and followed through on the attitude survey with its August 10 letter, in order to discourage employee support for the Union. Therefore the Company, through its attitude survey, violated Section 8(a)(1) of the Act. *Merle Lindsey Chevrolet, Inc.*, 231 NLRB 478, fn. 2 (1977).[14] However, the August 10 letter contained something more than an implied promise of benefits. The proposed sounding board constituted an employer plan whereby employees were invited to participate in the process whereby the Employer made decisions which affected wages, hours, and other terms and conditions of employment. Therefore the sounding board was itself a proposed condition of employment. An employer program or policy whereby employees are invited to make recommendations, submit complaints, or simply to have access to management, whether that program or policy is called a sounding board, grievance procedure, open door policy, or by any other name, is a condition and benefit of employment. Therefore, by announcing and subsequently implement-

[14] The complaint does not expressly allege that the Company violated the Act by conducting the attitude survey. However, the survey was a matter closely related to the August 10 letter and was raised by the Company by way of defense to the allegation of the complaint. Therefore a finding with respect to the legality of the survey is warranted.

ing the sounding board program, the Company expressly promised and granted a benefit to its employees in order to discourage support for the Union. The Company thereby violated Section (a)(1) of the Act. *S & H. Grossinger Inc.*, 156 NLRB 233, 234 (1965), enfd. in pertinent part 372 F.2d 26 (2d Cir. 1967); see also *Delta Faucet Company, supra.* As the Company discontinued the sounding board after the Union filed its election petition, I shall take up the pertinent allegation under the next heading.

IV. THE ALLEGED POST-PETITION UNFAIR LABOR PRACTICES AND OBJECTIONS TO THE ELECTION

A. *Discontinuance of the Sounding Board*

In its September 24 letter, the Company told the employees that it was discontinuing plans of implementing the sounding board because "in view of the [union] election petition, the Company would run the risk of possible legal implications." The Company did not inform its employees that it was discontinuing the sounding board because that program had been instituted in order to discourage support for the Union. The Company did not even claim that it was discontinuing the program in order to avoid the appearance of attempting to influence the outcome of the election. Instead, the Company placed responsibility for discontinuance of the plan squarely upon the Union, because it had the temerity to seek a Board-conducted election.[15]

If in fact the Company had announced and commenced implementation of the sounding board for lawful reasons, then the Company would have had no legitimate reason for abruptly discontinuing the program after the Union filed its election petition. This is not a case where an employer temporarily defers initiation of a contemplated pay increase or other benefit, pending the election proceedings, in order to avoid the appearance of attempting to influence the outcome of a Board-conducted election. In the present case, the Company had already announced and commenced implementation of the sounding board.[16] The Company's argument in its brief that cancellation of the sounding board in August probably would have resulted in an unfair labor practice complaint, but that discontinuance of the sounding board during the election campaign avoided "potential liability," patently makes no sense. Rather the Company's action in discontinuing the sounding board, ostensibly on the advice of counsel, tends to indicate that the Company well knew that the sounding board had been instituted in order to discourage employee support for the Union. If the Company were sincerely concerned about dissipating the effects of its unlawful conduct, then it would have honestly informed its employees that the sounding board program was announced and commenced in order to discourage union support, and further declared that it would not in the future engage in such unlawful conduct. Such action on the part of the Company would have been consistent with the usual Board remedy in these cases. When an employer violates the Act by promising or granting a benefit in order to discourage union support, the Board does not, as part of its normal remedy, direct the employer to withhold that benefit. Such an order would simply serve to punish the employees for the employer's unlawful conduct. See *Gene's Toyota Sales and Service, Inc.*, 252 NLRB 478 (1980). However, that is precisely what the Company did in the present case. Moreover, the Company attributed its action to the filing of the election petition. I find that the Company announced and commenced implementation of the sounding board in order to discourage employee support for the Union. When that action, together with its other unlawful actions, failed to prevent the Union from obtaining sufficient employee support for an election petition, the Company retaliated against its employees by cancelling the program. The Company thereby violated Section 8(a)(1) and (3) of the Act by depriving them of an actual or "perceived" benefit in reprisal for employee support for the Union. The Company thereby graphically demonstrated its power to arbitrarily give and to arbitrarily take away, i.e., the "well-timed . . . suggestion of a fist inside the velvet glove." *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405 (1964).

As indicated, the sounding board was a matter of interest to many employees. Employee Kenneth Grill volunteered to serve on the sounding board. Employee Barbara Zirkle testified that at a company conducted meeting in October, she complained about the lack of communication between the employees and management, whereupon Manager Stalker answered that "we all knew why" the sounding board was discontinued. Both Grill and Zirkle were union adherents. The sounding board program had at least the potential of leading to improvements in wages, hours, and working conditions, whether through revision of the employee handbook or otherwise. The Company's own survey indicated that these were matters of significant employee dissatisfaction. In these circumstances the Company's unlawful action constituted conduct which tended to interfere with employee free choice in the election. Nevertheless, with respect to the unfair labor practice case, the Union urges in its brief that the Board not order reinstatement of the sounding board "in light of the genesis of the Sounding Board and the General Counsel's and Charging Party's position that its implementation was a violation of the Act." I do not agree. It is unlikely that the Union would be taking this position if the benefit in question consisted of a wage increase. The Union may well view the sounding board as an illusory benefit which would serve only as a sham substitute for union representation. The Union is free to argue its position to the employees. However, the evidence indicates that not all employees may agree with the Union's position. Implementation of the sounding board depends heavily on the Company's good faith. However, the same is also true of a contractual griev-

[15] Therefore, for at least this reason, the cases cited by the Company in its brief as justifying the Company's action (*Uarco, Incorporated*, 169 NLRB 1153 (1968), and *The Great Atlantic & Pacific Tea Company, Inc.*, 192 NLRB 645 (1971)), are distinguishable. See *H. L. Meyer Company, Inc.*, 177 NLRB 565, fn. 2 (1969), enfd. in pertinent part 426 F.2d 1090 (8th Cir. 1970); *Chatfield-Anderson Co., Inc., d/b/a Truss-Span Company*, 236 NLRB 50, fn. 5 (1978), enfd. in pertinent part 606 F.2d 266 (9th Cir. 1979).

[16] For this additional reason the cases cited by the Company in its brief are further distinguishable. See previous footnote.

ance procedure. I find that it would effectuate the purposes of the Act to direct the Company to resume implementation of the sounding board.

B. *Assault With an Automobile*

On the afternoon of September 18, Union International Representative Rothweiler and employee Dennis Williams stationed themselves at the employee entrance to the Winchester plant for the purpose of distributing union literature to arriving second-shift employees. The second shift commenced at 3:24 p.m. Ritter and Williams began their distribution at or about 2:30 p.m. They testified that they were standing at the entrance to the company driveway which connects the plant to Apple Valley Road, the nearest public roadway. Rothweiler and Williams testified that they were standing in the outbound lane, with Rothweiler nearest to the center of the roadway. They testified in sum that while stationed in this position, a car driven by Contributing Section Foreman Sam Ritter approached them along Apple Valley Road, preliminary to making a left turn into the employee entrance. They further testified that Ritter was proceeding at 25 to 30 miles per hour, and that without slowing down, Ritter turned into the entrance through the outbound lane, forcing Williams to dash to an adjacent grassy area and Rothweiler to retreat into the inbound lane.

Ritter, who was presented as a company witness, testified that he proceeded along Apple Valley Road at or about 20 miles per hour, slowed down in order to make the turn into the plant driveway, and approached the driveway through the outbound lane. Ritter testified that the two men were standing on the curb, that as he signaled to make a left turn, Rothweiler stepped off the curb, but that as Ritter reached the entrance Rothweiler stepped back to the curb, apparently recognizing Ritter and assuming that he would not take a union handbill. However, according to Ritter, Williams stepped out into the roadway, blocking Ritter's car and forcing him to stop. Ritter testified that he waited until Williams moved to his right, and then proceeded into the plant premises. There was no conversation between Ritter and the union solicitors. Ritter testified that he did not attempt to hit or brush anyone and that he had been a licensed driver for 37 years without receiving a traffic ticket. Ritter further testified that after Rothweiler and Williams gave their testimony, he conducted a test drive which indicated that he could not make the turn into the plant driveway without slowing down to less than 20 miles per hour. With the knowledge and concurrence of the parties, I personally examined the area in question. Ritter further testified that at the time of the incident he did not recognize either Rothweiler or Williams, although Rothweiler had been pointed out to him some 2 or 3 months before. (Ritter was a supervisor on the second shift and Williams worked on the third shift.) Ritter knew the Union had been handbilling, indeed the Union had been handbilling the plant since May. Ritter testified that he did not learn until that evening that the Union had filed an election petition. The petition was filed with the Board's Regional Office on September 14, however, Manager Furcak testified without contradiction that the petition was not served on the Company until September 19. I credit Ritter's testimony that at the time of the incident he did not know that the Union had filed an election petition.

Rothweiler and Williams testified that the incident was observed by a number of employees, possibly as many as 15, who were in front of the plant apparently waiting for the start of the second shift. The employee entrance is about 200 yards from the front of the plant. My own observation indicates that if the incident occurred as described by Rothweiler and Williams, it could have been seen by persons in front of the plant. Nevertheless, Rothweiler and Williams were the only witnesses presented concerning the incident. As Williams was allegedly a victim of attempted assault, I do not agree with the argument of the General Counsel that his testimony should be given the weight normally accorded to a "disinterested witness." My own examination of the premises tends to indicate that the whole affair involved a trivial misunderstanding in which no one sought to injure, frighten, or provoke anyone else. The employee entrance is so laid out as to make it difficult or impossible for anyone to distribute literature without standing well into the roadway. There is a fence partway along each side of the company driveway, which extends to the point where the driveway widens as it joins Apple Valley Road. Rothweiler and Williams were in this widened area. The company driveway is barely wide enough for two lanes of traffic. (The Company's scale drawing, which was presented in evidence, indicates that the driveway is 22 feet wide.) There are no marked lanes. During the time that I examined the premises (at or about 5:30 p.m., when the second shift was already at work) I saw one automobile come through the entrance. The driver proceeded directly down the middle of the driveway. The inference is warranted that this is not unusual when there is little or no traffic or when traffic is flowing in one direction. My own examination further indicates that it would have been extremely difficult, if not impossible for Ritter to make the left turn into the entrance without slowing down to less than 20 miles per hour, unless he threw his car off balance. (Williams testified that Ritter came through on all four wheels.) It would also have been both difficult and unlikely for Ritter to have made a left turn into the entrance without passing through the outbound lane, if indeed it can be called a lane. In these circumstances it is not surprising that Ritter, Rothweiler, and/or Williams found themselves in each other's path. However, I am not persuaded that anyone intentionally created this situation. Therefore, I am recommending that the allegation of paragraph 5(j) of the complaint in Case 5-CA-11472 be dismissed, and that Union Objection 2 be overruled.

C. *Interrogation, Solicitation of Reports, Threats, and Confiscation of Union Literature*

Employee Barbara Zirkle worked as a modular service attendant. She began working at the Winchester plant in April and served a probationary period until October 16, when she became a permanent employee. Upon becoming a permanent employee she also became a volunteer union organizer and the Union so informed the Company

by letter dated October 19. Zirkle testified that she began attending union meetings in mid-September. However, she was not publicly identified as a union adherent prior to her becoming a permanent employee. Third-shift Modular Foreman Harold (Buster) Fincham was Zirkle's immediate supervisor. Zirkle testified that in early October, as she was nearing the end of her 6-month probationary period, Fincham repeatedly engaged her in conversations about the Union. According to Zirkle, Fincham asked her if she was "aware of what was going on at the gate with the third party." When Zirkle answered that she was, Fincham replied that he did not feel that they needed a third party to talk for them, and "how about you?" Zirkle gave a vaguely negative answer. According to Zirkle, Fincham asked if she had been receiving any pressure to join the Union. She answered, "no," and Fincham responded that "I want to know if you are being pressured." Zirkle testified that on another occasion, Fincham told her that he would not want to give up his right to speak for himself by having a third party in, but that this would happen if they allowed the Union to get in. Zirkle testified that on another occasion Fincham told her that if the third party came in the official time for breaks and lunch (10 minutes and 24 minutes, respectively) would be strictly enforced. In practice the Company permitted the employees to extend their breaks to 15 minutes and lunch periods to 30 minutes if they were caught up in their work and the extension did not interfere with normal operations. According to Zirkle, Fincham went on to rhetorically ask how many places there were that would give so many chances before they fired an employee, but that it would not be that way if the Union got in. In mid-October Fincham summoned Zirkle to his office for a 5-month review of her performance. As the date of interview had been delayed, this 5-month review was in fact the final review of her performance before the end of her probationary period. Fincham went over her performance and indicated how he graded her in various categories.[17] According to Zirkle, Fincham said that he heard there was a lot of pressure on the floor for the third party and asked her how she felt about the IUE. Zirkle answered that she had "kind of changed," but was equivocal about the direction of that change. At this point Fincham responded that "we know who is involved with the Union."

Fincham, in his testimony, denied the statements and questions attributed to him by Zirkle, and categorically denied that he ever discussed the Union with Zirkle. Fincham testified that other than those individuals whom the Union had identified to the Company as volunteer organizers, he did not know what employees were active for the Union and which were not. However, Fincham admitted that during supervisory meetings he reported on the union sympathies and antiunion sympathies of employees with whom he had spoken (but not Zirkle). Fincham was one of three foremen who reported to Third-Shift Supervisor William Agnew, who as indicated was intensely interested in the union attitude of employees under his supervision, and made a practice of drawing employees into conversations about the Union. Fincham testified that he was instructed by the Company to use such phrases as "in my opinion" and "the third party" when discussing the Union. This fact tends to corroborate Zirkle's description of her conversations with Fincham. Zirkle's testimony is also consistent with other evidence adduced in this proceeding. It is undisputed that the Company announced a policy of soliciting reports of alleged pressure by union adherents. Supervisor Agnew testified, in sum, that he systematically talked with employees under his direct supervision, warning them against the pitfalls of signing a union card, and asking them to report instances of pressuring. Agnew admitted that he continued to engage in such conversations long after the Union commenced its organizational campaign. In these circumstances it is unlikely that Fincham would have failed to talk to Zirkle about alleged union "pressure" and even less likely that he would have totally refrained from speaking to her about the Union. Zirkle was a logical target for Company proselytizing. She was a new employee who was nearing the end of her probationary period. She was also frequently rotated in her job assignments and therefore was in a position to be in contact with many employees. As will be discussed, Fincham's statements about the consequences of unionization were similar to statements made by another supervisor. At the time of the present hearing, Zirkle was still working under the immediate supervision of Fincham. Even allowing for partisan feelings, it is unlikely that Zirkle would knowingly testify falsely against Fincham.

I credit the testimony of Zirkle concerning her conversations with Fincham. I find that the Company, through Fincham, unlawfully interrogated Zirkle about her union attitude and activities and those of her fellow employees by asking her how she felt about the Union, whether she was aware of the union activity, and whether she had been pressured to join the Union. The Company further violated Section 8(a)(1) of the Act by soliciting Zirkle to report on the union activities of her fellow employees, and also unlawfully created the impression of surveillance of union activity by telling Zirkle that the Company knew who was involved with the Union.[18] The Company, through Fincham, further violated Section 8(a)(1) by threatening more onerous working conditions if the employees selected the Union as their bargaining representative. Fincham did not suggest that break and lunch times might be limited or that employees might be given fewer chances, as a result of collective bargaining or as a *quid pro quo* for employee benefits. Rather, without explanation, Fincham flatly equated employee selection of the Union with stricter disciplinary measures and limited break and lunch times. Therefore Fincham's statements could reasonably be interpreted as threats of reprisal if the employees voted for the Union.

[17] Zirkle and Fincham differed in their respective testimony as to Fincham's asserted explanation for the substantially average ratings which he gave her. Whichever version is credited, the evidence does not indicate that Fincham's explanation had anything to do with the issues presented in this case.

[18] The complaint does not allege that the Company, through Fincham, created the impression of surveillance of union activities. However, the matter of conversations between Fincham and Zirkle was fully litigated. Fincham, in his testimony specifically denied making the statement attributed to him by Zirkle. As indicated, I credit Zirkle.

However, I do not regard Fincham's statements as containing an express or implied threat or false assertion that the employees would be denied access to management if the Union won the election. Rather, Fincham's reference to "giv[ing] up his rights to speak for himself" purported to be a characterization of the relationship in which a union functions as the collective-bargaining representative of the employees. Therefore Fincham's statement constituted permissible campaign propaganda. Compare *Robbins & Myers, Inc.*, 241 NLRB 102 (1979).

By its letter to the Company dated September 11, the Union identified employee Robert Mills, among some 27 others, as volunteer organizers. Mills worked as a stockroom attendant on the first shift. Kenneth Knowlton was, and is, the Company's manager of new processes and major equipment. Knowlton was not in the line of direct supervision over Mills; however, the two had known each other for some 30 years. Mills testified that on about October 1, Knowlton came to him in the stockroom. Mills asked Knowlton what he needed. According to Mills, Knowlton said this was just a social call and "what do you think about having the Union in here." Mills answered that it would not hurt anything. Knowlton testified that he did not recall that conversation, but that he did recall a conversation involving Mills and another employee in which they discussed the difference in wages between the Winchester plant and the Company's unionized plant in Youngstown, Ohio. I credit Mills. Knowlton's question was typical of the kind of question asked by the Company's supervisory personnel. As previously found, the Company did not attach conclusive significance to outward manifestations of union adherence. Rather, the Company attached greater significance to impromptu expressions of opinion. Knowlton testified that Mills asked him if it were true that there were some differences in hourly wages between the Youngstown plant and the Winchester plant. If so, this inquiry probably suggested to Knowlton that Mills was not satisfied with the Union's information on this matter. Knowlton, having known Mills for many years, was a logical person to approach Mills in a seemingly offhand manner, and attempt to probe his attitude toward the Union. I find that the Company, by Knowlton, violated Section 8(a)(1) of the Act by interrogating Mills concerning his attitude toward the Union. Knowlton stood high in the management hierarchy. He had no legitimate reason to question Mills, he gave Mills no assurance against reprisal, nor indicated that Mills was free not to answer, and the questioning occurred in the context of other unfair labor practices, including (as will next be discussed) conduct which again involved Knowlton and Mills. Therefore the interrogation was coercive and unlawful.

On or about November 1, Knowlton again approached Mills in the stockroom. The facts concerning this incident are substantially undisputed. Mills was standing behind a counter. He had a union handbill which was visibly sticking out of his shirt pocket. Knowlton saw that it was a union handbill. Mills asked what Knowlton wanted. Knowlton reached across the counter, took the handbill and threw it "like an airplane" to the floor. Knowlton told Mills to pick up the handbill. Mills refused, whereupon Knowlton said "damn it, pick it up." Mills then picked up the handbill. The next day Knowlton apologized, saying that he meant no harm. (Knowlton testified that he apologized twice, once shortly after the incident occurred, and again the next day.) Mills told him that he accepted the apology. Knowlton testified that another employee was present when he threw the handbill, but that the employee had left by the time he told Mills to pick up the handbill. Knowlton testified that he "asked" Mills to pick up the handbill, but admitted that he did so twice, which would indicate something stronger than a polite request. Knowlton testified that the whole thing "was strictly done as fun and games."

I find that the Company, through Knowlton, violated Section 8(a)(1) of the Act by confiscating union literature from Mills, and by holding him up to ridicule by his fellow employees because of his support for the Union. (As to the latter, see *The Great Atlantic & Pacific Tea Company, Inc., supra*, 192 NLRB at 646, 659, enfd. 463 F.2d 184 (5th Cir. 1972).) Mills had an absolute right to retain union literature on his person. Therefore, by confiscating the handbill from Mills, even momentarily, Knowlton committed at least a technical violation of Section 8(a)(1). Section 7 rights of employees are not a joking matter. Moreover, Knowlton's action constituted more than a technical violation of the Act. Knowlton publicly treated Mills in a humiliating manner.[19] Knowlton's subsequent private apology to Mills was inadequate to remedy the Company's unlawful conduct. Knowlton's action was observed at least in part by at least one other employee. Knowlton did not assure Mills that the Company would respect his right to retain union literature on his person, or for that matter, that the Company would respect any of his rights under the Act. Knowlton's actions also occurred in the context of other unfair labor practices which, as will be discussed, continued even after this incident. See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). I further find that Knowlton's treatment of Mills constituted coercive and intimidating conduct which tends to inhibit union activity and thereby to interfere with employee free choice in an election. Therefore I am recommending that Union Objection 7 be sustained.

Employee Nelly West worked as an issue room attendant on the third shift. Gary Shumaker was her immediate supervisor. West was openly active for the Union. By letter dated October 4 the Union informed the Company that she was a volunteer organizer. West also wore a union hat to work. Nevertheless Third-Shift Supervisor Agnew was skeptical. Agnew testified that he still listed her with a question mark, because in May or June she had expressed opinions which he considered to be antiunion. West testified that early in the week of October 29 she injured her shoulder away from work. On the evening of Wednesday, October 31, she was suffering shoulder pain while at work, and she asked Agnew for a bandage. Agnew obtained a sling. As he was putting on the sling, a conversation ensued among West, Agnew,

[19] One may well ponder whether Knowlton would have regarded it as "fun and games" if Mills had grabbed antiunion literature from Knowlton's person, thrown it to the floor, and ordered Knowlton to pick it up.

and Raymond Fleming. At the time Fleming was the Company's manager of manufacturing and design. He was not in the line of direct supervision over West. However, he was in charge of the plant safety program. The General Counsel and the Union contend that in the course of this conversation Agnew and Fleming unlawfully interrogated West. In her testimony, West gave a somewhat disjointed version of the conversation. On her direct examination, West testified that as Agnew was putting on the sling, he pointed to her union hat and asked, "[W]hat's this." West answered that it was a hat. Agnew countered with "why are you doing this?" West responded that she felt they needed job security, job protection, and to stop favoritism. Agnew stated that she had job security, and West disagreed. On her cross-examination, West testified that both Agnew and Fleming pointed their finger and asked about the hat, but that Agnew probably did so first. According to West, Fleming asked why she was wearing "this." West admitted that Fleming asked her what happened to her shoulder. Nevertheless she testified that "they started this conversation with the hat." On cross-examination, West further admitted that during this conversation she talked about being called in because she had improperly filled out some forms and asserted that if this were a union plant she would not have been called in. However, she testified that she did not recall any discussion of the Company's Youngstown plant. As will be indicated, West's admission tends to be corroborative of the supervisors' version of the conversation.

Fleming testified that the incident occurred on October 24, and that he distinctly remembered the date because of a public function which he attended earlier that day. Agnew and Fleming testified, in sum, that as Agnew was putting on the sling, Fleming approached and asked, without pointing, what "this" was for. Agnew pointed to West's head, whereupon Fleming said that he was referring to the sling. Fleming then questioned West about her injury and its effect on her work. Fleming then asked Agnew whether West could do all of her work and if she was having any problems. At this point Agnew steered the conversation in a different direction. Agnew recalled that West was upset about being reprimanded concerning the forms. Agnew said that West would not have problems on her job, but that she had other problems. Agnew asked Fleming whether he had worked at the Company's Youngstown plant (he had), whether it was unionized (it was), and in essence, whether a similar reprimand could have occurred at Youngstown. Fleming answered affirmatively, and then left. Agnew testified that on this occasion he did not discuss the Union with West either before Fleming arrived or after he left. I credit the testimony of Agnew and Fleming concerning the conversation. Fleming was an unlikely person to initiate a conversation with West concerning the Union. He did not even know her name. However, plant safety was an area of his responsibility, and upon seeing Agnew putting a sling on West's arm, it is probable that he would have immediately directed his attention to that matter. West's admissions on cross-examination further indicate that her previous reprimand was mentioned in this conversation. Agnew's version of this conversation is consistent with his method of using provocative remarks or questions when talking to employees about the Union. Conceivably a conversation might have taken place which included both the West version and the conversation described by Agnew and Fleming. However, West did not state in her testimony that the conversation took such a course. Therefore I am recommending that the allegation of paragraph 5(c) of the complaint in Case 5-CA-11731 be dismissed.

Nelly West further testified that on November 2 or 5 she had a lengthy conversation with Modular Foreman Charles Breeden, who was temporarily substituting on the third shift. West was wearing her union hat, but was no longer wearing a sling. According to West, Breeden engaged her in conversation, and then asked, "[W]hat's this? Why are you wearing that?" West answered that they needed job protection and job security and to stop favoritism. According to West, Breeden answered that he wanted to protect West from the Union, and that "once you get a union in, you can't sit down and talk to us like you're doing right now because you have to go through the Union." According to West, Breeden added that if the Union got in, the employees would get only 10-minute breaks and a 24-minute lunch period. West testified that some supervisors used the phrase "by the book," but that she did not recall Breeden using that phrase.

Breeden, in his testimony, admitted that in early November he had an extended conversation with West in which the Union was discussed. However, he denied West's version of the conversation. According to Breeden, they were talking about West's problems in reporting production, i.e., the same type of problems which she had previously discussed with Third-Shift Supervisor Agnew. West said that she thought a union could help with problem solving and training. According to Breeden, he responded by expressing an opinion that if a union got in, "problem solving would take a little longer" and that "we would do things by the book." In the context in which Breeden made this statement (according to Breeden's version of the conversation) it is difficult to see why he would assert that they would go "by the book," i.e., adhere strictly to the rules if the Union got in. West's professed problem was that she was experiencing difficulties because of the Company's own strict adherence to its practices on reporting production. In essence, West was complaining about her problems with going by the book. In this context, it would be meaningless for Breeden to assert that if a union got in, things would change in that they would go by the book. It is also unlikely that in this lengthy conversation, Breeden would have referred to going "by the book" in a vacuum, without reference to any specific matter or problem at the plant. Breeden did not testify that they talked about contractual grievance procedures, Air Force procedures, or procedures at the Washington Star. However, Breeden's reference to going by the book is consistent with West's version of the conversation. In sum, Breeden told West that if the Union got in, the Company would go "by the book," i.e., breaks and lunch would be limited to the official time, and problem solv-

ing would take longer because the Company would refuse to communicate with the employees except through the Union.

I credit West. I find that the Company, through Breeden, violated Section 8(a)(1) by interrogating West concerning her union membership, attitude, and activities. I further find that the Company, through Breeden, violated Section 8(a)(1) by threatening more onerous working conditions if the employees selected the Union as their bargaining representative. Like Foreman Fincham, Breeden did not indicate that break and lunch times could be altered through the give and take of collective bargaining. Rather, like Fincham, he equated union representation with stricter limits on the duration of breaks and lunch periods. Breeden thereby threatened stricter time limits if the employees voted for the Union. Unlike Fincham, Breeden categorically stated that if a Union came in, the employees would not be able to communicate directly with management or their supervisors concerning the employees' grievances. The Company thereby violated Section 8(a)(1) by threatening loss of access to management if the employees voted for the Union. See *Robbins & Myers, supra*, 241 NLRB 102, fn.7.

I further find that the Company, by coercively interrogating its employees, soliciting them to report on the union activities of fellow employees, creating the impression of surveillance of union activities, and threatening more onerous working conditions if the employees selected a union, interfered with employee freedom of choice in the election. Conduct violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice in the election. Therefore the Board will normally direct a new election whenever an unfair labor practice occurs during the critical period, unless the violations are such that it is virtually impossible to conclude that they could have affected the results of the election. *Super Thrift Markets, Inc. d/b/a Enola Super Thrift*, 233 NLRB 409 (1977). The Company's unfair labor practices constitute the kind of conduct which warrants setting aside an election. *Super Thrift, supra*, 233 NLRB at 409-410. Therefore I am recommending that Union Objections 1, 6, and 9 be sustained.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By counseling Wayne Grill and by discontinuing its sounding board program, thereby discriminating against its employees in regard to their terms or conditions of employment in order to discourage membership in the Union, the Company has been and is violating Section 8(a)(3) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Company has engaged, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The General Counsel has failed to prove that the Company assaulted a union organizer and an employee with an automobile.

6. Union Objections 1, 4, 6, 7, and 9 in Case 5-RC-10982 have been sustained by the evidence, and the Company thereby interfered with the Board election held on November 16, 1979. Union Objection 2 is without merit.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and to post appropriate notices. I shall further recommend that the Company be required to expunge from the personnel records of Wayne Grill the counseling which was given to him in August 1979 and all references thereto. For the reasons previously discussed, I shall further recommend that the Company be ordered to restore and resume implementation of its sounding board program. As the Company unlawfully interfered with the conduct of the election on November 16, 1979, I shall recommend that the election be set aside and that a new election be directed at such time as the Regional Director deems appropriate.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[20]

The Respondent, General Electric Company, Winchester, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Counseling, warning, or threatening employees with discipline or other reprisal because of their union activities.

(b) Engaging in surveillance of union meetings.

(c) Creating the impression of surveillance of employee union activity by telling employees that it knows who is involved with the Union.

(d) Interrogating employees concerning their union membership, attitude, or activities, or those of their fellow employees.

(e) Soliciting employees to report on the union activities of their fellow employees.

(f) Confiscating union literature from its employees.

(g) Ridiculing employees because of their union activity.

(h) Promising, granting, withholding or withdrawing, benefits from its employees in order to discourage mem-

[20] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

bership in International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, or any other labor organization.

(i) Threatening employees with stricter disciplinary procedures, stricter break or lunch times, loss of access to management, or other more onerous working conditions if they designate or select said Union or any other labor organization as their bargaining representative.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Expunge from the personnel record of Wayne Grill, the counseling which was given to him in August 1979, and all references thereto.

(b) Reinstate and resume implementation of its sounding board program.

(c) Post at its plant in Winchester, Virginia, copies of the attached notice marked "Appendix."[21] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

The election previously conducted on November 16, 1979, is hereby set aside, and a new election shall be directed at such time as the Regional Director for Region 5 deems appropriate.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."